

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 517**

Introduced by Kristensen, 37

Read first time January 19, 1999

Committee: Transportation

A BILL

1 FOR AN ACT relating to state highways; to amend sections 39-1302,  
2 39-1333, and 39-1367, Reissue Revised Statutes of  
3 Nebraska; to change provisions relating to highway  
4 rights-of-way; to declare certain freeways a public  
5 nuisance under certain conditions; to provide powers and  
6 duties; to require a report; to restate intent; to  
7 harmonize provisions; and to repeal the original  
8 sections.

9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 39-1302, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           39-1302. For purposes of sections 39-1301 to 39-1392 and  
4 sections 4 and 5 of this act, unless the context otherwise  
5 requires:

6           (1) Abandon ~~shall mean~~ means to reject all or part of the  
7 department's rights and responsibilities relating to all or part of  
8 a fragment, section, or route on the state highway system;

9           (2) Alley ~~shall mean~~ means an established passageway for  
10 vehicles and pedestrians affording a secondary means of access in  
11 the rear to properties abutting on a street or highway;

12           (3) Approach or exit road ~~shall mean~~ means any highway or  
13 ramp designed and used solely for the purpose of providing ingress  
14 or egress to or from an interchange or rest area of a highway. An  
15 approach road ~~shall begin~~ begins at the point where it intersects  
16 with any highway not a part of the highway for which such approach  
17 road provides access and ~~shall terminate~~ terminates at the point  
18 where it merges with an acceleration lane of a highway. An exit  
19 road ~~shall begin~~ begins at the point where it intersects with a  
20 deceleration lane of a highway and ~~shall terminate~~ terminates at  
21 the point where it intersects any highway not a part of a highway  
22 from which the exit road provides egress;

23           (4) Arterial highway ~~shall mean~~ means a highway primarily  
24 for through traffic, usually on a continuous route;

25           (5) Business ~~shall mean~~ means any lawful activity  
26 conducted primarily for the purchase and resale, manufacture,  
27 processing, or marketing of products, commodities, or other  
28 personal property or for the sale of services to the public or by a

1 nonprofit corporation;

2 (6) Channel ~~shall mean~~ means a natural or artificial  
3 watercourse;

4 (7) Commercial activity ~~shall mean~~ means those activities  
5 generally recognized as commercial by zoning authorities in this  
6 state, and industrial activity ~~shall mean~~ means those activities  
7 generally recognized as industrial by zoning authorities in this  
8 state, except that none of the following shall be considered  
9 commercial or industrial:

10 (a) Outdoor advertising structures;

11 (b) General agricultural, forestry, ranching, grazing,  
12 farming, and related activities, including wayside fresh produce  
13 stands;

14 (c) Activities normally or regularly in operation less  
15 than three months of the year;

16 (d) Activities conducted in a building principally used  
17 as a residence;

18 (e) Railroad tracks and minor sidings; and

19 (f) Activities more than six hundred sixty feet from the  
20 nearest edge of the right-of-way of the road or highway;

21 (8) Connecting link ~~shall mean~~ means the roads, streets,  
22 and highways designated as part of the state highway system and  
23 which are within the corporate limits of any city or village in  
24 this state;

25 (9) Controlled-access facility ~~shall mean~~ means a highway  
26 or street especially designed for through traffic and over, from,  
27 or to which owners or occupants of abutting land or other persons  
28 have no right or easement or only a controlled right or easement of

1 access, light, air, or view by reason of the fact that their  
2 property abuts upon such controlled-access facility or for any  
3 other reason. Such highways or streets may be freeways, or they  
4 may be parkways;

5 (10) Department ~~shall mean~~ means the Department of Roads;

6 (11) Displaced person ~~shall mean~~ means any individual,  
7 family, business, or farm operation which moves from real property  
8 acquired for state highway purposes or for a federal-aid highway;

9 (12) Easement ~~shall mean~~ means a right acquired by public  
10 authority to use or control property for a designated highway  
11 purpose;

12 (13) Expressway ~~shall mean~~ means a divided arterial  
13 highway for through traffic with full or partial control of access  
14 which may have grade separations at intersections;

15 (14) Family ~~shall mean~~ means two or more persons living  
16 together in the same dwelling unit who are related to each other by  
17 blood, marriage, adoption, or legal guardianship;

18 (15) Farm operation ~~shall mean~~ means any activity  
19 conducted primarily for the production of one or more agricultural  
20 products or commodities for sale and home use and customarily  
21 producing such products or commodities in sufficient quantity to be  
22 capable of contributing materially to the operator's support;

23 (16) Federal-aid primary roads ~~shall mean~~ means roads,  
24 streets, and highways, whether a part of the state highway system,  
25 county road systems, or city streets, which have been designated as  
26 federal-aid primary roads by the department and approved by the  
27 United States Secretary of Transportation and shown on the maps  
28 provided for in section 39-1311;

1           (17) Freeway ~~shall mean~~ means an expressway with full  
2 control of access;

3           (18) Frontage road ~~shall mean~~ means a local street or  
4 road auxiliary to an arterial highway for service to abutting  
5 property and adjacent areas and for control of access;

6           (19) Full control of access ~~shall mean~~ means that the  
7 right of owners or occupants of abutting land or other persons to  
8 access or view is fully controlled by public authority having  
9 jurisdiction and that such control is exercised to give preference  
10 to through traffic by providing access connections with selected  
11 public roads only and by prohibiting crossings or intersections at  
12 grade or direct private driveway connections;

13           (20) Grade separation ~~shall mean~~ means a crossing of two  
14 highways at different levels;

15           (21) Highway ~~shall mean~~ means a road or street, including  
16 the entire area within the right-of-way, which has been designated  
17 a part of the state highway system;

18           (22) Individual ~~shall mean~~ means a person who is not a  
19 member of a family;

20           (23) Interchange ~~shall mean~~ means a grade-separated  
21 intersection with one or more turning roadways for travel between  
22 any of the highways radiating from and forming part of such  
23 intersection;

24           (24) Map ~~shall mean~~ means a drawing or other illustration  
25 or a series of drawings or illustrations which may be considered  
26 together to complete a representation;

27           (25) Mileage ~~shall mean~~ means the aggregate distance in  
28 miles without counting double mileage where there are one-way or

1 divided roads, streets, or highways;

2 (26) Parking lane ~~shall mean~~ means an auxiliary lane  
3 primarily for the parking of vehicles;

4 (27) Parkway ~~shall mean~~ means an arterial highway for  
5 noncommercial traffic, with full or partial control of access, and  
6 usually located within a park or a ribbon of park-like development;

7 (28) Relinquish ~~shall mean~~ means to surrender all or part  
8 of the rights and responsibilities relating to all or part of a  
9 fragment, section, or route on the state highway system to a  
10 political or governmental subdivision or public corporation of  
11 Nebraska;

12 (29) Right of access ~~shall mean~~ means the rights of  
13 ingress and egress to or from a road, street, or highway and the  
14 rights of owners or occupants of land abutting a road, street, or  
15 highway or other persons to a way or means of approach, light, air,  
16 or view;

17 (30) Right-of-way ~~shall mean~~ means land, property, or  
18 interest therein, usually in a strip, acquired for or devoted to a  
19 road, street, or highway;

20 (31) Road ~~shall mean~~ means a public way for the purposes  
21 of vehicular travel, including the entire area within the  
22 right-of-way. A road designated as part of the state highway  
23 system may be called a highway, while a road in an urban area may  
24 be called a street;

25 (32) Roadside ~~shall mean~~ means the area adjoining the  
26 outer edge of the roadway. Extensive areas between the roadways of  
27 a divided highway may also be considered roadside;

28 (33) Roadway ~~shall mean~~ means the portion of a highway,

1 including shoulders, for vehicular use;

2 (34) Separation structure ~~shall mean~~ means that part of  
3 any bridge or road which is directly overhead of the roadway of any  
4 part of a highway;

5 (35) State highway purposes ~~shall have~~ has the meaning  
6 set forth in subsection (2) of section 39-1320;

7 (36) State highway system ~~shall mean~~ means the roads,  
8 streets, and highways shown on the map provided for in section  
9 39-1311 as forming a group of highway transportation lines for  
10 which the department shall be the primary authority. The state  
11 highway system ~~shall include~~ includes, but is not ~~be~~ limited to,  
12 rights-of-way, connecting links, drainage facilities, and the  
13 bridges, appurtenances, easements, and structures used in  
14 conjunction with such roads, streets, and highways;

15 (37) Street ~~shall mean~~ means a public way for the  
16 purposes of vehicular travel in a city or village and ~~shall include~~  
17 includes the entire area within the right-of-way;

18 (38) Structure ~~shall mean~~ means anything constructed or  
19 erected, the use of which requires permanent location on the ground  
20 or attachment to something having a permanent location;

21 (39) Title ~~shall mean~~ means the evidence of a person's  
22 right to property or the right itself;

23 (40) Traveled way ~~shall mean~~ means the portion of the  
24 roadway for the movement of vehicles, exclusive of shoulders and  
25 auxiliary lanes;

26 (41) Unzoned commercial or industrial area for purposes  
27 of control of outdoor advertising ~~shall mean~~ means all areas within  
28 six hundred sixty feet of the nearest edge of the right-of-way of

1 the interstate and federal-aid primary systems which are not zoned  
2 by state or local law, regulation, or ordinance and on which there  
3 is located one or more permanent structures devoted to a business  
4 or industrial activity or on which a commercial or industrial  
5 activity is conducted, whether or not a permanent structure is  
6 located thereon, the area between such activity and the highway,  
7 and the area along the highway extending outward six hundred feet  
8 from and beyond each edge of such activity and, in the case of the  
9 primary system, may include the unzoned lands on both sides of such  
10 road or highway to the extent of the same dimensions if those lands  
11 on the opposite side of the highway are not deemed scenic or having  
12 aesthetic value as determined by the department. In determining  
13 such an area, measurements shall be made from the furthest or  
14 outermost edges of the regularly used area of the commercial or  
15 industrial activity, structures, normal points of ingress and  
16 egress, parking lots, and storage and processing areas constituting  
17 an integral part of such commercial or industrial activity;

18 (42) Visible, for purposes of section 39-1320, in  
19 reference to advertising signs, displays, or devices, ~~shall mean~~  
20 means the message or advertising content of such sign, display, or  
21 device is capable of being seen without visual aid by a person of  
22 normal visual acuity. A sign shall be considered visible even  
23 though the message or advertising content may be seen but not read;

24 (43) Written instrument ~~shall mean~~ means a deed or any  
25 other document that states a contract, agreement, gift, or transfer  
26 of property; and

27 (44) Zoned commercial or industrial areas ~~shall mean~~  
28 means those areas within six hundred sixty feet of the nearest edge



1 of the right-of-way of the Highway Beautification Control System  
2 defined in section 39-201.01, zoned by state or local zoning  
3 authorities for industrial or commercial activities.

4           Sec. 2.    Section 39-1333, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           39-1333.   The department may adopt reasonable rules and  
7 regulations and issue permits for the construction or use of any  
8 private entrance or exit, approach road, facility, thing, or  
9 appurtenance upon or connected to highway rights-of-way. Such  
10 rules and regulations and such permits may include, but need not be  
11 limited to, provisions for construction of highway improvements,  
12 traffic controls, culverts, requirements as to depth of fills, and  
13 requirements for drainage facilities deemed necessary. Such a  
14 permit so issued may contain such terms and conditions as, in the  
15 judgment of the granting authority, may be in the best interest of  
16 the public. All construction under such permits shall be under the  
17 supervision of the granting authority and at the expense of the  
18 applicant. After completion of the construction of the particular  
19 private entrance or exit, approach road, facility, thing, or  
20 appurtenance, the same shall be maintained at the expense of the  
21 applicant and in accordance with the rules and regulations of the  
22 department. Nothing herein contained shall be determined or  
23 construed to grant any right for or authorize the construction of a  
24 private entrance or exit or approach road upon or connected to any  
25 facility, thing, or appurtenance on the right-of-way of any highway  
26 or section of highway for which the department has by gift,  
27 agreement, or eminent domain acquired the rights of access on a  
28 portion thereof.

1                   Sec. 3.     Section 39-1367, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   39-1367.       Recognizing that safe and efficient  
4 transportation on modern high-speed highways is a matter of  
5 important interest to all the people in the state, the Legislature  
6 determines and declares that effective maintenance, operation, and  
7 control of freeways is essential to the general welfare of the  
8 State of Nebraska and is therefor a matter of statewide concern.

9                   The establishment of laws capable of meeting future  
10 requirements as well as present demands of safe and efficient  
11 transportation is recognized as an urgent problem and a proper  
12 objective of highway legislation.

13                  It is the intent of the Legislature to consider of  
14 paramount importance the convenience and safety of the traveling  
15 public.

16                  The Legislature hereby determines and declares that  
17 sections 39-1337, 39-1339, 39-1367, and 39-1372 and section 4 of  
18 this act are necessary for the preservation of the public health  
19 and safety, for promotion of the general welfare, and as a  
20 contribution to the national defense.

21                  Sec. 4.     New or additional access to a state highway  
22 right-of-way which will impact the traffic on a freeway shall be  
23 approved by the department only if the convenience and safety of  
24 the traveling public on the freeway is maintained and the existing  
25 excess capacity of the freeway is maintained at the existing  
26 level-of-service. If the excess capacity at the level-of-service  
27 on a freeway at the time of approval is not maintained because of  
28 such new or additional access, the new or additional access is

1 declared to be a public nuisance.

2           Sec. 5.   The department shall annually estimate or  
3 determine the current usage of any freeway, including approach or  
4 exit roads. The department shall annually file with the Clerk of  
5 the Legislature a report of such current usage.

6           Sec. 6.   Original sections 39-1302, 39-1333, and 39-1367,  
7 Reissue Revised Statutes of Nebraska, are repealed.